IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

MFA.No. 1136 of 2002()

OPMV.284/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT: PETITIONERS
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1. **MOHAMMED SALI,**
   (FATHER OF THE DECEASED SYED MOHAMMED),
   KAMBY VALAPPIL, KAKKAZHAM, AMBALAPPUZHA.

2. **MYMOONA,**
   (MOTHER OF THE DECEASED SYED MOHAMMED)
   KAMBY VALAPPIL, KAKKAZHAM, AMBALAPPUZHA.

3. **BEENA,**
   (WIFE OF THE THE DECEASED SYED MOHAMMED),
   KAMBY VALAPPIL, KAKKAZHAM, AMBALAPPUZHA.

4. **THANSEER MOHAMMED (MINOR),**
   (S/O. OF DECEASED SYED MOHAMMED),
   KAMBY VALAPPIL, KAKKAZHAM, AMBALAPPUZHA.

5. **NOORMOHAMMED (MINOR),**
   (S/O.DECEASED SYED MOHAMMED),
   KAMBY VALAPPIL, KAKKAZHAM, AMBALAPPUZHA.
   (APPELLANTS 4 AND 5 ARE MINORS AND THEY ARE
   REPRESENTED BY THEIR MOTHER, THE 3RD APPELLANT).

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS: RESPONDENTS
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1. **UNNY, S/O.LAKSHMANAN NADAR,**
   KLN COTTAGE, WARD NO.I,
   KARIMKULAM VILLAGE, KARIMKULAM PANCHAYATH,
   NEYYATTINKARA TALUK.

2. **RAJENDRAN, S/O.SANKARAN,**
   PULLANNY PUTHEN VEEDU, KEEZHKOLLAM DESOM,
   WARD NO.4, CHENKAL PANCHAYAT, CHENKAL PAKUTY,
   NEYYATTINKARA TALUK, THIRUVANANTHAPURAM.

**3. THE NEW INDIA ASSURANCE CO.LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
ALAPPUZHA.**

BY ADV. SRI.M.JACOB MURICKAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1136 OF 2002 ()

Dated this the 11th day of September, 2007

J U D G M E N T

KOSHY,J.

Parents, wife and children of a motor accident victim filed an application for compensation contending that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent Insurance company. Tribunal found that the offending vehicle was validly insured by the 3rd respondent Insurance company and accident occurred because of the negligence of the driver of that vehicle. However, against a claim for compensation of Rs.20,00,000/-, tribunal has awarded only Rs.6,95,500/-. Only quantum of compensation is disputed in this appeal.

2. Deceased was employed in Saudi Arabia and during Ramzan when he came for leave, incident occurred. Ext.A8 salary certificate issued by the employer was produced which

shows that his monthly salary at Saudi Arabia was Rs.5,200/- Saudi Rials. PW3 who was earlier employed along with the deceased gave details of his employment. It was also come out in evidence that the deceased was working at Al-Madeena Refrigeration Centre, Saudi Arabia from 30.1.1995 as Assistant Sales Manger. At that time he was getting Rs.4,000/- Saudi Rials besides food and accommodation. He was promoted as Sales Manger and his salary was enhanced from 1.8.1998 as Rs.5,200/- and the above Rs.5,200/- was apart from food and accommodation. Ext.A8 is the certificate issued in Arabic Language and PW4, the Arabic Lecturer has translated Ext.A8 Salary certificate and details of the certificate were also deposed by him. Tribunal did not accept it as the employer from Saudi Arabia was not summoned and only Rs.5,000/- was taken as the monthly income. However Supreme Court in ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan and others (JT 2002 (5) SC 74)*** held that in the case of persons who are employed in foreign countries, the income should be calculated on the basis of the exchange rate as applicable on the date of accident. If that be so, monthly income will be Rs.52,000/-, that is, taking the exchange rate as on the date of accident. The contention of the appellant is that

at least the above amount should be taken as the monthly income, even if value of food and accommodation cannot be taken into account. The passports Exts.A7, A9 and A10 were also produced to show that wife and children were also residing with him. That shows that he was sufficiently well paid in Saudi Arabia so that he was able to get residence with his family. If at least Rs.24,000/- is taken as the monthly income and $^{1}/_{3}^{rd}$ is deducted, monthly loss of dependency will be Rs.16,000/-. Tribunal has taken 16 as the multiplier. It is contended that taking guideline from the Second Schedule, tribunal ought have fixed 17 as the multiplier. But when a higher multiplicand is there, the exact multiplier mentioned in the Second schedule need not be taken into account and it can be taken only as a guideline. If that be so, compensation payable for loss of dependency will be 16,000 x 12 x 16 = 30,72,000/-. Tribunal has awarded for loss of dependency only Rs.6,40,000/-. Therefore, the additional amount payable will be Rs.24,32,000/- if Rs.16,000/- alone is taken as monthly loss of dependency. But we note that total amount claimed as compensation was only Rs.20,00,000/-. It is true that Apex Court in ***Nagappa v. Gurudayal Singh and others (AIR 2003 SC 674)*** held that award amount need not be limited to

the amount claimed, but, court is bound to give just and reasonable compensation. But, in this case, claimants are well placed and educated and they are bound by the claim. Hence we are of the opinion that total compensation can be restricted to Rs.20,00,000/- as claimed. Hence additional compensation payable will be Rs.13,04,500/-. Even though it was contended that no amount was granted for loss of estate and amounts granted on all other heads were very meager, considering the total amount granted, we are not enhancing the compensation on other grounds. The above additional amount of Rs.13,04,500/- should be deposited by the 3rd respondent Insurance company with 7% interest from the date of application till deposit. On deposit of the same, appellants are entitled to get the amount in the same proportion as directed by the tribunal. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1136 OF 2002 ()

J U D G M E N T

11th September, 2007